

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DAVID KASPER, ET UX.,**

**APPELLANTS,**

**v.**

**RANDALL W. WELHOFF, ET AL.,**

**RESPONDENTS.**

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DOCKET NUMBER WD69329

DATE: September 8, 2009

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Appeal From:  
CASS COUNTY CIRCUIT COURT  
THE HONORABLE JOSEPH PAUL DANDURAND, JUDGE

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Appellate Judges:  
Division One: James E. Welsh, P.J., Victor C. Howard and Alok Ahuja, JJ.

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Attorneys:  
Matthew J. Hamilton, Esq., Pleasant Hill, MO for Appellants  
Jane A. Landrum, Esq., Kansas City, MO for Respondent Matthew J. Hamilton  
Michael T. Halloran, Esq., Overland Park, KS for Respondent Jerry Click  
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MISSOURI APPELLATE COURT OPINION SUMMARY  
COURT OF APPEALS – WESTERN DISTRICT

of Tolly, Strickland, and Click was too remote to constitute the proximate cause of the Kaspers' damages.

**REVERSED.**

**Division One holds:**

As to Respondent Welhoff (driver of the vehicle immediately in front of Kasper's), there is sufficient evidence from which a jury could find that Welhoff failed to provide Kasper with a warning sufficient to give Kasper enough time to stop before colliding with Welhoff's car. Kasper testified that he was following Welhoff at a safe distance, meaning a distance sufficient to permit him to safely stop his vehicle if necessary without hitting the forward vehicle. Kasper testified that, as he crested the hill, he saw Welhoff's truck, brake lights unlit. Kasper then glanced in his rearview mirror at the vehicle behind. When Kasper looked forward again, Welhoff's brake lights were lit, but Kasper had insufficient time in which to negotiate a safe stop. The testimony of other Respondents indicates that Welhoff was following the vehicles ahead too closely, without sufficient time to safely stop. The fact that Kasper may have diverted his eyes briefly to his rear-view mirror before the impact occurred does not establish Welhoff's right to judgment as a matter of law.

Summary judgment must also be reversed as to Respondent Click, the first driver in the group. The evidence indicates that, before the Kasper-Welhoff collision, the driver immediately behind Click (Tolly) was able to stop without hitting Click. Nevertheless, the evidence concerning Click's sudden, unexpected, and unsafe stopping and left turn would permit a jury to find that, if Click had given adequate warning of his intention to turn, this would have enabled the other drivers in the line of cars to slow more gradually, and to provide further notice to the vehicles following them.

There is a genuine factual dispute as to whether Welhoff stopped before hitting Strickland, and whether Strickland stopped before hitting Tolly, prior to the Kasper-Welhoff collision. But even if the vehicles immediately following them had successfully stopped, the cases Respondents cite establish no hard-and-fast rule that proximate causation cannot be established where intervening vehicles are able to stop without incident before a trailing driver's collision. Here, the evidence would permit a jury to find that because of Strickland's and Tolly's failure to maintain a safe distance from the car ahead, and their inattention, they failed to give the drivers behind them an adequate and timely warning of their intention to stop their vehicles.

**Opinion by: Alok Ahuja, Judge**

September 8, 2009

<p><b>THIS SUMMARY IS UNOFFICAL AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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